

**In the United States District Court
For the Southern District of West Virginia
Huntington (Division 3)**

MARY DURSTEIN,

Plaintiff,

v.

TODD ALEXANDER, et al.,

Defendants.

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(**No. 3:19-cv-00029**
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(**Plaintiff Durstein's memorandum in**
(**support of motion for leave to file**
(**supplemental complaint**
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Rule 15(d) of the Federal Rules of Civil Procedure authorizes a party to supplement a pleading by moving for leave to file it. The supplemental pleading is to aver any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.

A supplemental pleading may join a new claim arising from the new transaction, occurrence, or event. Wright & Miller, 6A Fed. Prac. & Proced. § 1506 (3d ed.).

The supplemental pleading also may include averments to correct an alleged defect in the pleading to be supplemented, augmenting a prior pleaded claim. Fed.R.Civ.P. 15(d); Franks v. Ross, 313 F.3d 184, 198, 199 (4th Cir. 2002).

The standard for adjudicating a motion for leave to supplement a pleading is essentially the same liberal standard that governs a motion for leave to file an amended complaint. In either situation, the "leave should be granted, and should be denied only

where good reason exists . . . , such as prejudice to the defendants." Franks, 313 F.3d at 198 n.15 (4th Cir. 2002) (ellipsis in original; citation and quotation marks omitted).

The 4th Circuit has resoundingly endorsed allowing supplemental pleadings. The court observed that a supplemental pleading is "a useful device, enabling a court to award complete relief, or more nearly complete relief, in one action, and to avoid the cost, delay and waste of separate actions which must be separately tried and prosecuted." New Amsterdam Cas. Co. v. Waller, 323 F.2d 20, 28 (4th Cir. 1963).

The court added that supplemental pleadings should be allowed "as a matter of course." Waller, 323 F.2d at 28-29.

Here, Durstein filed her amended complaint as of right in late February, 2019. (ECF 20.)

Each defendant moved to dismiss under Rule 12(b)(6) in late March, 2019. (ECFs 26, 28, 24.)

While those motions were pending, the court stayed discovery, and then adjudicated those motions on December 13, 2019. (ECFs 55, 56.)

Less than two months ago, on January 30, 2020, defendants Board of Education of Cabell County and Todd Alexander filed their first answers in the case—answers to the amended complaint. Defendant West Virginia Superintendent has not yet filed an answer in this case, including to the amended complaint.

Given the nascent stage of the parties' activities in this case, granting Durstein leave to file the proposed Supplemental Complaint cannot prejudice any of the defendants.

Respectfully submitted,

/s Michael S. Bailey

Michael S. Bailey (W.Va. Bar No. 8507)

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Of Counsel for Mary Durstein

CERTIFICATE OF SERVICE

The undersigned counsel for Plaintiff, Mary Durstein, served the foregoing *Memorandum in support of motion for leave to file a supplemental complaint* by electronically filing a copy of the same with the Clerk of the Court using the CM/ECF system on this 17th day of March, 2020 to:

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